

(2) *Failure to implement capital restoration plan.* The failure of a savings association to implement a capital restoration plan required under section 38, or this part, or the failure of a company having control of a savings association to fulfill a guarantee of a capital restoration plan made pursuant to section 38(e)(2) of the FDI Act shall subject the savings association or company to the assessment of civil money penalties pursuant to section 8(i)(2)(A) of the FDI Act.

(c) *Other enforcement action.* In addition to the actions described in paragraphs (a) and (b) of this section, the OTS may seek enforcement of the provisions of section 38 or this part through any other judicial or administrative proceeding authorized by law.

PART 567—CAPITAL

Sec.

Subpart A—Scope

567.0 Scope.

Subpart B—Regulatory Capital Requirements

567.1 Definitions.

567.2 Minimum regulatory capital requirement.

567.3 Individual minimum capital requirements.

567.4 Capital directives.

567.5 Components of capital.

567.6 Risk-based capital credit risk-weight categories.

567.8 Leverage ratio.

567.9 Tangible capital requirement.

567.10 Consequences of failure to meet capital requirements.

567.11 Reservation of authority.

567.12 Purchased credit card relationships, servicing assets, intangible assets (other than purchased credit card relationships and servicing assets), credit-enhancing interest-only strips, and deferred tax assets.

567.14–567.19 [Reserved]

APPENDICES A–B TO PART 567 [RESERVED]

APPENDIX C TO PART 567—RISK-BASED CAPITAL REQUIREMENTS—INTERNAL-RATINGS-BASED AND ADVANCED MEASUREMENT APPROACHES

AUTHORITY: 12 U.S.C. 1462, 1462a, 1463, 1464, 1467a, 1828 (note).

SOURCE: 54 FR 49649, Nov. 30, 1989, unless otherwise noted.

Subpart A—Scope

§ 567.0 Scope.

(a) This part prescribes the minimum regulatory capital requirements for savings associations. Subpart B of this part applies to all savings associations, except as described in paragraph (b) of this section.

(b)(1) A savings association that uses Appendix C of this part must comply with the minimum qualifying criteria for internal risk measurement and management processes for calculating risk-based capital requirements, utilize the methodologies for calculating risk-based capital requirements, and make the required disclosures described in that appendix.

(2) Subpart B of this part does not apply to the computation of risk-based capital requirements by a savings association that uses Appendix C of this part. However, these savings associations:

(i) Must compute the components of capital under § 567.5, subject to the modifications in sections 11 and 12 of Appendix C of this part.

(ii) Must meet the leverage ratio requirement at §§ 567.2(a)(2) and 567.8 with tier 1 capital, as computed under sections 11 and 12 of Appendix C of this part.

(iii) Must meet the tangible capital requirement described at §§ 567.2(a)(3) and 567.9.

(iv) Are subject to §§ 567.3 (individual minimum capital requirement), 567.4 (capital directives); and 567.10 (consequences of failure to meet capital requirements).

(v) Are subject to the reservations of authority at § 567.11, which supplement the reservations of authority at section 1 of Appendix C of this part.

(c) *Optional transition provisions related to the implementation of consolidation requirements under FAS 167*—(1) *Scope, applicability, and purpose.* The section provides optional transition provisions for a savings association that is required for financial and regulatory reporting purposes, as a result of its implementation of Statement of Financial Accounting Standards No. 167, Amendments to FASB Interpretation No. 46(R) (referred to in this section as FAS 167), to consolidate certain

variable interest entities (VIEs) as defined under United States generally accepted accounting principles (GAAP). These transition provisions apply through the end of the fourth quarter following the date of a savings association's implementation of FAS 167 (implementation date).

(2) *Exclusion period*—(i) *Exclusion of risk-weighted assets for first and second quarters.* For the first two quarters, after the implementation date (exclusion period), including for the two calendar quarter-end regulatory report dates within those quarters, a savings association may exclude from risk-weighted assets:

(A) Subject to the limitations in paragraph (c)(4) of this section, assets held by a VIE, provided that the following conditions are met:

(1) The VIE existed prior to the implementation date;

(2) The savings association did not consolidate the VIE on its balance sheet for calendar quarter-end regulatory report dates prior to the implementation date;

(3) The savings association must consolidate the VIE on its balance sheet beginning as of the implementation date as a result of its implementation of FAS 167; and

(4) The savings association excludes all assets held by VIEs described in paragraphs (c)(2)(i)(A)(1) through (3) of this section.

(B) Subject to the limitations in paragraph (c)(4) of this section, assets held by a VIE that is a consolidated asset-backed commercial paper (ABCP) program, provided that the following conditions are met:

(1) The savings association is the sponsor of the ABCP program,

(2) Prior to the implementation date, the savings association consolidated the VIE onto its balance sheet under GAAP and excluded the VIE's assets from the savings association's risk-weighted assets; and

(3) The savings association chooses to exclude all assets held by ABCP program VIEs described in paragraphs (c)(2)(i)(B)(i) and (ii) of this section.

(ii) *Risk-weighted assets during exclusion period.* During the exclusion period, including the two calendar quarter-end regulatory report dates within

the exclusion period, a savings association adopting the optional provisions of paragraph (c)(2) of this section must calculate risk-weighted assets for its contractual exposures to the VIEs referenced in paragraph (c)(2)(i) on the implementation date and include this calculated amount in its risk-weighted assets. Such contractual exposures may include direct-credit substitutes, recourse obligations, residual interests, liquidity facilities, and loans.

(iii) *Inclusion of Allowance for Loan and Lease Losses (ALLL) in tier 2 capital for the first and second quarters.* During the exclusion period, including for the two calendar quarter-end regulatory report dates within the exclusion period, a savings association that excludes VIE assets from risk-weighted assets pursuant to paragraph (c)(2)(i) of this section may include in tier 2 capital the full amount of the allowance for loan and lease losses (ALLL) calculated as of the implementation date that is attributable to the assets it excludes pursuant to paragraph (c)(2)(i) of this section (inclusion amount). The amount of ALLL includable in tier 2 capital in accordance with this paragraph shall not be subject to the limitations set forth at § 567.5(b)(4).

(3) *Phase-in period*—(i) *Exclusion amount.* For purposes of this paragraph, exclusion amount is defined as the amount of risk-weighted assets excluded in paragraph (c)(2)(i) of this section as of the implementation date.

(ii) *Risk-weighted assets for the third and fourth quarters.* A savings association that excludes assets of consolidated VIEs from risk-weighted assets pursuant to paragraph (c)(2)(i) of this section may, for the third and fourth quarters, after the implementation date (phase-in period), including for the two calendar quarter-end regulatory report dates within those quarters exclude from risk-weighted assets 50 percent of the exclusion amount, provided that the savings association may not include in risk-weighted assets pursuant to this paragraph an amount less than the aggregate risk-weighted assets calculated pursuant to paragraph (b)(2)(ii) of this section.

(iii) *Inclusion of ALLL in Tier 2 capital for the third and fourth quarters.* A savings association that excludes assets of

consolidated VIEs from risk-weighted assets pursuant to paragraph (c)(3)(ii) of this section may, for the phase-in period, include in tier 2 capital 50 percent of the inclusion amount it included in tier 2 capital during the exclusion period, notwithstanding the limit on including ALLL in tier 2 capital in § 567.5(b)(4).

(4) *Implicit recourse limitation.* Notwithstanding any other provision in § 567.0(c), assets held by a VIE to which a savings association has provided recourse through credit enhancement beyond any contractual obligation to support assets it has sold may not be excluded from risk-weighted assets.

[72 FR 69438, Dec. 7, 2007, as amended at 75 FR 4652, Jan. 28, 2010]

Subpart B—Regulatory Capital Requirements

§ 567.1 Definitions.

For the purposes of this subpart:

Adjusted total assets. The term *adjusted total assets* means:

(1) A savings association's total assets as that term is defined in this section;

(2) Plus

(i) The prorated assets of any includable subsidiary in which the savings association has a minority ownership interest that is not consolidated under generally accepted accounting principles; and

(ii) The remaining goodwill (FSLIC Capital Contributions) resulting from prior regulatory accounting practices as provided in the definition of *qualifying supervisory goodwill* in this section;

(3) Minus

(i) Assets not included in the applicable capital standard except for those subject to paragraphs (3)(ii) and (3)(iii) of this definition;

(ii) Investments in any includable subsidiary in which a savings association has a minority interest;

(iii) Investments in any subsidiary subject to consolidation under paragraph (2)(ii) of this definition; and

(iv) For purposes of determining core capital, qualifying supervisory goodwill.

Asset-backed commercial paper program. The term *asset-backed commercial*

paper program (ABCP program) means a program that primarily issues commercial paper that has received a credit rating from an NRSRO and that is backed by assets or other exposures held in a bankruptcy-remote special purpose entity. The term *sponsor* of an ABCP program means a savings association that:

(1) Establishes an ABCP program;

(2) Approves the sellers permitted to participate in an ABCP program;

(3) Approves the asset pools to be purchased by an ABCP program; or

(4) Administers the ABCP program by monitoring the assets, arranging for debt placement, compiling monthly reports, or ensuring compliance with the program documents and with the program's credit and investment policy.

Cash items in the process of collection. The term *cash items in the process of collection* means checks or drafts in the process of collection that are drawn on another depository institution, including a central bank, and that are payable immediately upon presentation; U.S. Government checks that are drawn on the United States Treasury or any other U.S. Government or Government-sponsored agency and that are payable immediately upon presentation; broker's security drafts and commodity or bill-of-lading drafts payable immediately upon presentation; and unposted debits.

Commitment. The term *commitment* means any arrangement that obligates a savings association to:

(1) Purchase loans or securities;

(2) Extend credit in the form of loans or leases, participations in loans or leases, overdraft facilities, revolving credit facilities, home equity lines of credit, eligible ABCP liquidity facilities, or similar transactions.

Common stockholders' equity. The term *common stockholders' equity* means common stock, common stock surplus, retained earnings, and adjustments for the cumulative effect of foreign currency translation, less net unrealized losses on available-for-sale equity securities with readily determinable fair values.

Conditional guarantee. The term *conditional guarantee* means a contingent obligation of the United States Government or its agencies, the validity of